

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KCAF INVESTORS, L.L.C., SUE ANN BURKE, LOGIC II, L.L.C., LOGIC III, L.L.C.
and STRETCH/JEFFREY RUMANER,**

Appellants,

v.

**KANSAS CITY DOWNTOWN STREETCAR TRANSPORTATION DEVELOPMENT
DISTRICT, A MISSOURI POLITICAL SUBDIVISION,**

Respondent.

DOCKET NUMBER WD76354

Date: August 7, 2013

Appeal from:
Jackson County Circuit Court
The Honorable Peggy Stevens McGraw, Judge

Appellate Judges:
Division Four: James E. Welsh, P.J., Alok Ahuja, J. and Jack R. Grate, Sp. J.

Attorneys:
Mark J. Bredemeier, Lee's Summit, MO, for appellant.
Robert A. Henderson and Douglas S. Stone, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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DEVELOPMENT DISTRICT, A MISSOURI POLITICAL SUBDIVISION,**

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Jackson County

Before Division Four Judges: James E. Welsh, P.J., Alok Ahuja, Judge, and Jack R. Grate, Sp. J.

KCAF Investors, L.L.C., Logic II, L.L.C., Logic III, L.L.C., Sue Anne Burke, and Jeffrey “Stretch” Rumaner (collectively “Appellants”) filed suit seeking a declaratory judgment that a sales tax and certain real-property special assessments imposed to fund the Kansas City Downtown Streetcar Transportation Development District were unlawful. Appellants also sought injunctive relief against the collection of the levies. The Appellant LLCs own real property within the District; Ms. Burke and Mr. Rumaner are owners, and the managing members, of the LLCs.

The District was formed in 2012 pursuant to the Missouri Transportation Development District Act, §§ 238.200 to 238.280. Under the Act, the proponents of the District were required to file a petition requesting that the circuit court call an election to authorize the formation of the Streetcar District (the “Formation Lawsuit”). The Missouri Highway and Transportation Commission and the Kansas City Area Transportation Authority were named as respondents. Notice was published in the *Kansas City Star* newspaper informing the public of the filing of the action, and informing District residents and property owners of their right to intervene in the Formation Lawsuit to support or oppose the petition.

In the Formation Lawsuit the circuit court ultimately determined that the proposed Streetcar District, and the funding mechanisms to be employed to finance the streetcar project, were lawful and constitutional, did not impose an undue burden on any property owner within the District, and were not unjust or unreasonable. Based on those determinations, the circuit court ordered the conduct of a two mail-in ballot elections in which District residents (but not property owners) were allowed to vote: the first, to authorize the District’s formation; and the second, to authorize the specific funding mechanisms necessary to finance the District. Both the

District's formation, and the imposition of the sales tax and real-property assessments at issue in this case, were approved by voters.

Following the elections, Appellants filed the present lawsuit. Appellants' petition alleges that the real property special assessments are unlawful because owners of real property in the District were not notified of, or permitted to vote in, the election which authorized the special assessments. Appellants allege that the sales tax is unlawful with respect to part of the District, because part of the Streetcar District also falls within the pre-existing 1200 Main/South Loop Transportation Development District, and is already subject to a one-percent retail sales tax to fund that district. Appellants argue that § 238.235.1(7) establishes a one-percent limit on any sales tax supporting a transportation development district, and that it prohibits the "stacking" of separate transportation-related sales taxes, in excess of the one-percent limit.

The circuit court granted the Streetcar District's motion to dismiss Appellants' petition. The court held that Appellants' challenges to the real-property special assessments were "election contests" which were untimely under § 115.577, because Appellants did not bring their claims within thirty days of the certification of the results of the election approving the special assessments. The circuit court also held that Appellants were precluded from asserting any of their claims because they should have raised their challenges in the Formation Lawsuit.

This appeal follows.

AFFIRMED.

Division Four holds:

The circuit court properly dismissed Appellants' petition because Appellants had the right, and obligation, to intervene in the Formation Lawsuit to assert their challenges there; because they failed to do so, they may not challenge the District's funding mechanisms in this belated action.

Appellants first argue that the notice of the Formation Lawsuit published in the *Kansas City Star* was constitutionally insufficient to bar them from pursuing this lawsuit. Appellants' brief argument on this issue cites only a single case, involving a tax sale, to argue that notice by publication violates due process whenever an individual's property interests are at stake. The United States Supreme Court has held, however, that courts must assess the extent to which a challenged government action threatens an individual's property interests in order to determine what level of notice is required by due-process principles. In this case Appellants raise threshold challenges to the District's formation and funding mechanisms on grounds equally available to all District residents and property owners; they seek injunctive relief applicable to all residents and property owners. The actions which Appellants challenge are wholly unlike a tax sale, in which an individual's property ownership is directly taken. Because the sole case Appellants cite to support their due-process argument involves a wholly dissimilar situation, we reject their inadequate-notice argument.

Assuming that Appellants were adequately notified of their right to participate in the Formation Lawsuit, we conclude that they were required to raise their current claims in that

earlier action. The circuit court had the statutory authority to decide questions like those raised by Appellants in the Formation Lawsuit. Moreover, the Missouri Transportation Development District Act plainly contemplates that formation lawsuits will result in a definitive, and final, resolution of threshold legal challenges to a district's formation or proposed funding, before the District and other persons take actions dependent on the District's lawfulness. Appellants had the unconditional right to intervene in the Formation Lawsuit. By requiring that notice be provided by publication to persons like Appellants, beyond the service of process on the named respondents, the legislature plainly contemplated that formation lawsuits would have effects on the rights of persons other than those expressly named. Moreover, the terms of the statutorily-required notice make clear that Appellants had the obligation to participate in that action.

Cases decided by the United States Supreme Court, and by the Missouri Supreme Court, recognize that preclusion principles may be applied more broadly in cases like this one, in which taxpayers challenge governmental programs on grounds equally available to the public generally, and seek relief which would benefit the public generally. The preclusion principles recognized in these cases support the General Assembly's enactment of a statutory scheme designed to produce a final determination of threshold challenges to a transportation development district.

Opinion by: Alok Ahuja, Judge

August 7, 2013

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